



C.D. Howe Building, 240 Sparks Street, 4th Floor West, Ottawa, Ont. K1A 0X8
Édifice C.D. Howe, 240, rue Sparks, 4^e étage Ouest, Ottawa (Ont.) K1A 0X8

Reasons for decision

Public Service Alliance of Canada,

applicant,

and

St. John's International Airport Authority,

respondent.

Board File: 29170-C

Neutral Citation: 2014 CIRB 708

January 14, 2014

Counsel of Record

Mr. James Cameron, for the Public Service Alliance of Canada;

Mr. Denis J. Mahoney, for the St. John's International Airport Authority.

On December 13, 2011, the Public Service Alliance of Canada (PSAC or the union) filed an application with the Canada Industrial Relations Board (the Board) pursuant to section 18.1 of the *Canada Labour Code (Part I Industrial Relations)* (the *Code*), seeking the partition of an existing bargaining unit composed of employees working for the St. John's International Airport Authority (SJIAA or the employer), so as to create a separate bargaining unit for firefighters.

By agreement of the parties, proceedings in this matter were delayed as a consequence of a lengthy collective bargaining dispute in which they were engaged. Following resolution of that dispute, the application was heard by the Board, composed of Ms. Elizabeth MacPherson, Chairperson and Messrs. Richard Brabander and Norman Rivard, Members, in St. John's, Newfoundland and Labrador, on December 5 and 6, 2013.

I. Background and Facts

[1] Until the 1990s, airports in Canada were owned, operated or subsidized by the federal government, through Transport Canada. Beginning in 1992, control of Canadian airports was devolved to local airport authorities that are governed by boards of directors composed of representatives of the local, provincial/territorial and federal governments, local business groups and other stakeholders.

[2] Prior to this devolution of responsibility, airport workers were federal government employees. At that time, labour relations in the federal public service were regulated by the *Public Service Staff Relations Act (PSSRA)*. Under that statute, bargaining units were determined on the basis of job classification. There were therefore multiple bargaining units at each airport. The PSAC represented a majority of airport workers, including firefighters. Under the public service regime, firefighters were subject to the master collective agreement between the Treasury Board Secretariat (TBS) and the PSAC, although terms and conditions of employment that were applicable solely to the firefighters were contained in a group specific agreement.

[3] The SJIAA was created in 1996 and assumed responsibility for the operation of the airport in St. John's as of December 1, 1998. Labour relations between the airport authority and the unions representing its employees are subject to the *Code*. Under this statute, the Board has significant discretion to determine the composition of bargaining units, and is not limited to units defined along class or craft lines. The Board and its predecessor, the Canada Labour Relations Board (CLRB), have consistently expressed a preference for larger, comprehensive bargaining units, which it deems to be more conducive to orderly collective bargaining, administrative efficiency and convenience in bargaining, enhancement of lateral mobility of employees and labour relations stability (see *Brink's Canada Limited* (1996), 100 di 39 (CLRB no. 1153) at pages 44-45).

[4] In December 1998, the PSAC applied to the Board for certification as the bargaining agent for two units of employees at the SJIAA. The union proposed that there be two separate bargaining units: one for firefighters and one for all of the other airport employees. It appears from the records at the time that the firefighters were adamant that they should be in a separate unit from the other airport employees. The employer opposed the proposed two-unit bargaining

structure and took the position that a single, all-employee unit was appropriate for collective bargaining at the St. John's airport.

[5] In February 1999, the Board rejected the PSAC's request for a separate bargaining unit for firefighters and issued a certification order that provided for a single, all-employee unit at the SJIAA (Board order no. 7519-U). The Board's reasons for this decision, *St. John's International Airport Authority*, 1999 CIRB LD 26, indicate that the Board was of the opinion that a comprehensive bargaining unit was appropriate given the history of collective bargaining between the parties. The Board went on to quote from its jurisprudence, namely that where the terms and conditions of employment for a group of persons within a unit can be given special consideration during the bargaining process, separate bargaining units are not justified; and that where the community of interest can be reconciled, the Board prefers the creation of larger bargaining units. The Board expressed its view that, in the SJIAA case, a single all-employee unit would favour industrial stability, administrative efficiency and effective bargaining.

[6] In March 1999, a group of firefighters requested that the Board reconsider its decision (Board file no. 20220-C). Without providing specific examples, the applicants alleged that they needed a bargaining unit of their own because firefighters had little or no influence over collective bargaining at the airport. The applicants claimed that they were always outvoted by the other members of the local. By means of an administrative letter dated May 13, 1999, the applicants, the union and the employer were advised that a reconsideration panel of the Board had dismissed the application on the grounds that it had failed to raise any issues that would have caused the Board to alter its original decision.

[7] The parties have subsequently negotiated four collective agreements. The first agreement, which was based substantially on the pre-existing TBS-PSAC collective agreement, was reached in August 1999, and was for a term expiring November 30, 2001. Notice to bargain for the renewal of this agreement was given on August 13, 2001 and a tentative agreement was reached fairly quickly. However, the SJIAA Board of Directors refused to ratify the agreement and the parties resumed negotiations. After the employees rejected the employer's final offer, a legal work stoppage commenced. This strike lasted 87 days and was only finally resolved in

April 2004, when the parties entered into a four-year collective agreement, expiring November 30, 2005.

[8] The third collective agreement between the parties was settled in August 2006, when the union membership voted, against the union's recommendation, to accept a final offer tabled by the employer. This resulted in a four-year collective agreement expiring November 30, 2009.

[9] During the period following the signing of the third collective agreement, the parties negotiated and implemented a Joint Job Evaluation Plan. By agreement of the parties, commencement of bargaining for renewal of the collective agreement was delayed by this initiative. On a number of occasions during this period, the firefighters expressed concerns regarding the union's alleged failure to properly represent their interests and renewed their demand for a separate bargaining unit. In light of this pressure, the union submitted this application for partition of the bargaining unit on December 13, 2011.

[10] Meanwhile, the parties commenced bargaining for renewal of the collective agreement that had expired November 30, 2009. When direct bargaining and conciliation and mediation efforts failed, the union initiated a legal strike on September 11, 2012. As noted above, the Board's proceedings in the union's section 18.1 application were put in abeyance during the labour dispute. In July 2013, after a work stoppage of some 10 months duration, the parties concluded a settlement on the basis of a mediators' recommendation for a seven-year collective agreement expiring December 31, 2016. Immediately following the return to work, the firefighters and fire captains filed grievances contesting the point ratings that had been assigned to their positions under the Joint Job Evaluation Plan.

II. Positions of the Parties

A. The PSAC

[11] The PSAC submits that, since the date that the original certification order was issued in February 1999, there has been a continuing divergence of interests between the firefighters and the other employees in the bargaining unit. It contends that, as a result of that divergence of interests, labour relations harm and difficulties have resulted. These differences have caused the union to conclude that the current bargaining unit structure is no longer appropriate for collective

bargaining. It submits that the establishment of a separate bargaining unit for firefighters would resolve the issues that have caused longstanding problems.

[12] The union points out that it is party to a maintenance of activities agreement with the employer entered into pursuant to section 87.4 of the *Code* which requires, among other things, that firefighting services be maintained in the event of a legal work stoppage. It submits that the fact that the firefighters are the largest contingent of full-time employees who are required to maintain services during a strike is very divisive and exacerbates the tensions between the firefighters and the other employees in the bargaining unit. Firefighters continue to feel strongly that they are unable to have their issues addressed in collective bargaining, as other groups within the bargaining unit are not supportive of firefighter issues.

[13] In the settlement of the parties' second collective agreement, the firefighters lost a grandfathered protection for lieu days, a benefit specific to their classification that they had enjoyed for some time. This loss created resentment within the Fire Hall and reinforced the perception that the firefighters' interests can only be effectively represented if they have their own bargaining unit. The firefighters wish to negotiate a specific pension plan provision to provide for early retirement and to obtain wage increases providing parity with firefighters at the Halifax airport. The firefighters believe that, because they are in a minority in the all-employee bargaining unit, these issues cannot and will not be addressed.

[14] Similarly, the firefighters are dissatisfied with the Joint Job Evaluation Plan that the union and employer negotiated and implemented. In December 2010, the firefighters wrote to the PSAC's Negotiations Coordinator, expressing their serious concerns about the manner in which the union staff person was representing them in the development of the job evaluation plan. They alleged that the union staff representative was biased against firefighters and that the joint committee had agreed to evaluation criteria that did not place sufficient weight on the critical elements of a firefighter's job. They pointed out that the salary of the SJIAA firefighters was 25% below that of firefighters working for the St. John's Regional Fire Department and 30% below that of firefighters at the Halifax airport.

[15] The firefighters' continuing dissatisfaction with the joint job evaluation process led them to write to the President of the PSAC, John Gordon, in June 2011. In this letter, they complained

about the representation provided by the PSAC and asked the union to support an application to the Board to have them placed in a separate bargaining unit. The firefighters pointed out that the Board had, at that time, recently carved the firefighters out of a unit at the Québec City airport. The letter concluded that the only way the firefighters felt that they could continue to be effectively represented by the PSAC is under their own bargaining certificate.

[16] The union's sole witness was Mr. Christopher Bussey (CB), a fire captain with 23 years experience as a firefighter. He had originally been employed as a firefighter by Transport Canada and transferred to the SJIAA when it assumed responsibility for managing the St. John's airport in 1998. He was promoted to fire captain in 2009. He has served as the Fire Hall representative on various committees, as local union President and as a PSAC regional representative. CB has participated in the PSAC's leadership development program and has been a member of the union bargaining committee for each of the last three rounds of collective bargaining.

[17] In addition to his employment at the SJIAA, CB served as a volunteer firefighter at Tor Bay for eight years and has fought many fires in both these capacities. CB described the work of an airport firefighter and pointed out that, because their job is inherently dangerous, firefighters have no right to refuse dangerous work under Part II of the *Canada Labour Code* (Health and Safety). Firefighters work a 24 hours on/72 hours off rotating schedule; no other employees at the airport work a 24-hour shift. On-duty firefighters eat and sleep at the Fire Hall. As well, firefighters are required to meet a physical fitness standard and are tested annually; no other group of employees at the airport are subject to these standards.

[18] CB testified that internal candidates are given priority for employment as a firefighter. Since 2006, all new hires in the Fire Hall have been individuals who had worked at the SJIAA as heavy equipment operators during the winter and who had taken the appropriate certification course and passed the physical fitness evaluation. External hires tend to be individuals who have been firefighters elsewhere. CB suggested that opportunities for transfers out of the bargaining unit are limited, but admitted that two of the current managers are former firefighters.

[19] As a consequence of their lifestyle, the firefighters have very close ties to one another, a relationship not shared with the other airport employees. It is CB's perception that firefighters are looked down upon by the other employees in the bargaining unit, who are under the

impression that all the firefighters do is eat and sleep. As an example of the alleged culture that exists at the airport, he cited an incident that occurred at a retirement dinner several years ago. At the event, one of the local union representatives told the retirees "now you can stay home and get paid for doing nothing instead of coming to work and getting paid for doing nothing." CB testified that this incident created a lot of hurt feelings among the firefighter group. He also gave the example of the firefighters' hockey team, which invited other airport employees to join them, with little success. He noted that when Transport Canada was responsible for the airport, employee meetings were held at the Fire Hall so that firefighters could attend; now they are more often held elsewhere, which excludes the firefighters. On cross-examination, CB admitted that no firefighter has ever filed a complaint under the employer's respectful workplace policy, alleging that another employee has behaved disrespectfully, nor has a firefighter ever complained to the PSAC about disrespectful comments by other bargaining unit members.

[20] During the 2004 work stoppage, firefighters worked their full schedule, as required by the maintenance of activities agreement, and picketed on their own time. They felt that they were contributing a lot to the situation, but in CB's view, other employees felt that the firefighters were not contributing as much to the resolution of the dispute as the strikers.

[21] With respect to the job evaluation plan, CB testified that the firefighters expected that the SJIAA and the PSAC would adopt the plan in place in Halifax, under which the firefighters did fairly well. However, the ultimate decision was to adopt an amended version of the Halifax plan that the firefighters feel works to their disadvantage. The firefighters were seen as holding up the implementation of the Joint Job Evaluation Plan as they continued to contest it. CB alleges that, during this time, other employees such as plumbers and electricians would not perform work in the Fire Hall.

[22] CB admitted that there was cohesion in the bargaining unit during the 2012-13 work stoppage, despite some dissension over the interpretation and application of the maintenance of activities agreement. Because they were required to work, the firefighters contributed a portion of their pay to a fund to help equalize the incomes of the employees on the picket line. Nevertheless, the firefighters felt that they were in a conflict of interest because they had to work while their union colleagues were on strike. In CB's opinion, the other employees perceived the

fact that the firefighters were working as a factor prolonging the strike. He testified that firefighters do not have the same interests as the other employees in the bargaining unit, and want to be able to address their issues at the bargaining table and have a mechanism to resolve differences without going to war with the employer.

[23] CB admitted that the firefighters have been able to resolve a number of their issues directly with the employer, outside of the collective bargaining process. For example, in December 2004, the employer agreed to a trial change in shift scheduling that the firefighters wished to implement; the trial was extended and the shift scheduling that the firefighters requested has now been implemented on a permanent basis. CB was unable to give an example of a firefighter issue that could not be addressed in bargaining or directly with the employer outside of the bargaining process. CB also admitted that, with respect to the three rounds of collective bargaining in which he was involved, the issues that impeded settlement were not specific or unique to the firefighters.

[24] The PSAC asserts that the situation at the SJIAA is similar to the one that existed at the Québec City airport and that caused the Board to create a separate unit for firefighters in that location. It contends that the firefighters are unanimous in their desire for a separate bargaining unit; the working conditions for firefighters are different than those of the other bargaining unit members; and that the firefighters are dissatisfied with the results of the Joint Job Evaluation Plan. The union suggests that the fact that there have been two lengthy strikes in 14 years is evidence that collective bargaining is not working well at the St. John's airport and that the comprehensive bargaining unit created in 1999 is therefore inappropriate.

B. The SJIAA

[25] The SJIAA opposes the union's application to fragment the bargaining unit.

[26] The SJIAA's sole witness was Mr. Keith Collins (KC), who has been President and Chief Executive Officer since January 2005. In his view, a high level of co-operation and integration within the work force is required in order for the organization to be successful. He expressed concern that placing the firefighters in a separate bargaining unit would undermine the employee cohesion that he believes is required.

[27] KC indicated that the SJIAA is a relatively small business, with only 50 permanent full-time unionized employees. Up to 30 seasonal employees are hired during the winter. In his view, it would be disproportionate to have two bargaining units in such a small enterprise. He pointed out that negotiating a collective agreement is labour intensive and creates a drain on both senior management and the employee bargaining committee members.

[28] KC testified that the parties have been able to conclude four collective agreements in the 14-year history of the SJIAA and that the employer has addressed every issue raised by the firefighters, whether during collective bargaining or otherwise. In his view, the current bargaining unit structure is appropriate for collective bargaining and there is no compelling reason to change it.

[29] With respect to CB's allegations that the other bargaining unit employees disrespect the firefighters, KC indicated that it is the employer's policy that employees should be able to work in an environment free from harassment. As a follow-up to commitments contained in the most recent settlement, the employer and the union have collaborated to offer respectful workplace training sessions for all employees. These sessions are delivered by an external organization jointly selected by the parties and funded by the employer. KC had never been advised that there was tension directed at the firefighters. He observed that firefighters are an important part of the organization and have taken a leadership role, both in the union and the social club. He shares CB's view that the remarks made by a union representative at the retirement dinner were inappropriate and wrong. In his view, those remarks did not represent the opinion of anyone else in the room.

[30] KC testified that, as a consequence of the maintenance of activities agreement, there are a number of employees besides firefighters who are required to work during a legal work stoppage. These include the duty managers and, in winter, the heavy equipment operators. During the most recent work stoppage, the firefighters discharged their duties and, when not on duty, participated in the strike and walked the picket line.

[31] With respect to the two rounds of collective bargaining in which he has participated, KC testified that there were no issues specific to firefighters that impeded or prevented settlement. In the most recent round of bargaining, the union was seeking parity with Halifax airport for all

employees, not just the firefighters. St. John's airport is the second largest airport in Atlantic Canada, after Halifax, which is two and one half times larger than St. John's. The employers' objective was to ensure that its employees were the second highest paid airport workers in Atlantic Canada and this was achieved. KC indicated that specific firefighter issues, such as scheduling, have been dealt with over the years. For example, the scheduling issue was dealt with through a pilot project that has subsequently been incorporated into the collective agreement. He indicated that the SJIAA does not have difficulty recruiting new firefighters; in recent years, the employer has been able to fill all vacancies from among the ranks of the heavy equipment operators.

[32] KC admitted that the firefighters have been seeking a separate bargaining unit for some time. Although he was of the opinion that labour relations were improving prior to the most recent dispute, KC acknowledged that restoring relationships after a bitter 10-month strike is challenging. The fact that the firefighters are part of the bargaining unit does not, in his opinion, make developing an effective labour-management relationship any more challenging.

[33] The SJIAA submits that, taken in its totality, the evidence favours a determination that the existing bargaining unit is and continues to be appropriate for collective bargaining. It suggests that the firefighters' position has more to do with the quality of the representation that they believe they are getting from the union, rather than the structure of the bargaining unit. The SJIAA stresses that firefighter issues have never been an impediment to the settlement of a collective agreement; the members of the bargaining unit, including the firefighters, maintained cohesion throughout both work stoppages; and the union has never made an application under section 87.4(8) of the *Code* to suggest that its strike was ineffective because of the level of service that had to be maintained.

[34] The SJIAA distinguishes the situation at St. John's airport from that which existed at Québec City on the basis that in this case, there is a significant amount of integration between the firefighters and the other employees in the bargaining unit and no evidence of the divisions that existed at Québec City. As well, mobility at the SJIAA is significantly different than that which existed in Québec City. Here, there are no problems recruiting firefighters and there is a career path for firefighters within the organization. It argues that, in St. John's, firefighters have an

effective voice in collective bargaining and are able to have their issues addressed through collective bargaining and the grievance/arbitration system. For example, unlike Québec City, firefighters can grieve the point totals established through the jointly developed job evaluation plan. There is no evidence in St. John's, as there was in Québec City, that the firefighters' demands were the cause of or prolonged the labour conflicts that have occurred.

[35] The SJIAA submits that the PSAC has not met the test for a review of the bargaining unit structure, namely that it is no longer appropriate for collective bargaining.

III. Analysis and Decision

[36] It is well known that this Board and its predecessor, the CLRB, have expressed a preference for larger bargaining units. However, in a recent decision, *Servisair Inc. and Servisair Deicing Services Inc.*, 2013 CIRB 692, the Board explained the factors that it considers when determining the scope of a bargaining unit in various circumstances:

[49] It is well established that the Board has exclusive jurisdiction to determine the appropriate bargaining unit in any given case (*Royal Aviation*, 2000 CIRB 69). In undertaking this responsibility, the Board is not required to determine the ideal unit, or even the most appropriate unit, but only an appropriate unit (*National Bank of Canada* (1985), 58 di 94; 11 CLRB (NS) 257; and 86 CLIC 16,032 (partial report) (CLRB no. 542)). Consequently, the determination of the appropriate bargaining unit is more of an art than a science. As the Board stated in *CFTO-TV Limited* (1981), 45 di 306 (CLRB no. 345), the decision must be based on the facts and circumstances of each particular case:

There is nothing that the Board can say in this case regarding appropriate bargaining unit determination that has not already been said in countless decisions emanating from labour relations boards throughout the years. The variety of "criteria" and "considerations" only goes to prove that bargaining unit configurations cannot be "carved in stone". Standard industry type units can be created that will suit most applications but there will always be the exceptions where circumstances will dictate variations and even inconsistencies. In such cases, bargaining units must reflect the special circumstances and be determined according to the merits of each case. ...

(pages 310-311)

[50] Factors considered by the Board in making its determination regarding the appropriateness of a bargaining unit include community of interest; viability of the unit; employee wishes; industry practice or pattern and the organizational structure of the employer. Although the Board has expressed a general preference for wider-based bargaining units, which it believes promote administrative efficiency, convenience in bargaining and industrial stability, the Board will often deviate from that expressed preference. For example, when seized with an application for certification of a newly organized bargaining unit, the Board will favour factors that increase access to collective bargaining and may certify units that consist of a subset of the occupations present in the workplace, even if such

groupings are not optimal from the view point of the employer's organizational structure. As the Board stated in *G4S Secure Solutions (Canada) Ltd.*, 2012 CIRB 625:

[48] ... While the Board has expressed a preference for wider-based units, there is no automatic presumption in favour of large units. The Board will certify a smaller unit, if necessary to give effect to the employees' constitutionally guaranteed right to freedom of association. To achieve this objective, the Board may certify a local rather than regional or national bargaining unit, even if this causes some administrative inconvenience to the employer. The Board's decision on the appropriateness of a bargaining unit will generally be upheld unless a court considers it clearly irrational (see *International Longshoremen's and Warehousemen's Union, Ship and Dock Foremen, Local 514 v. Prince Rupert Grain Ltd.*, [1996] 2 S.C.R. 432).

[51] In cases where collective bargaining is well established and the parties have longstanding relationships, the Board may place greater emphasis on factors other than access to collective bargaining. In *Sécur Inc.*, 2001 CIRB 109, the Board indicated:

[60] The question of reconfiguring the units is not exempt from the fundamental objectives of the *Code* of which the Board is required to establish the practical side. Accordingly, the reconfiguration of bargaining units must promote the employees' exercise of the rights conferred by the *Code* while enabling the business to be operated properly. The Board must therefore deal with a reconfiguration with a sufficiently long-term vision to contribute to the development of relations between the bargaining agents and the employer with regard to the proposed units. While considering these general principles, the Board will nonetheless take into account the specific facts of each application.

[37] Section 18.1 was added to the *Code* in 1999, and removed the Board's ability to initiate bargaining unit reviews on its own motion. In addition to requiring that the application for review originate with one of the parties, the statute obliges the Board to give the parties an opportunity to reach agreement on an appropriate bargaining unit, if and when the Board determines that the existing units are no longer appropriate for collective bargaining. In general, this provision has more often been used to merge bargaining units, rather than to fragment them.

[38] When the parties do not agree that the existing bargaining unit structure is no longer appropriate, the onus is on the party seeking to change the existing structure to satisfy the Board of this fact. As the Board does not lightly tamper with collective bargaining structures, the applicant must adduce sound and compelling reasons for undertaking a bargaining unit review (see *Canadian Broadcasting Corporation*, 2003 CIRB 253). The history of collective bargaining between the parties is just one of the factors that the Board considers when deciding whether a bargaining unit is no longer appropriate for collective bargaining. The fact that another potential unit exists does not necessarily lead to a conclusion that the existing unit is no longer appropriate (see *Canadian National Railway Company*, 2009 CIRB 446, upheld on reconsideration in

Canadian National Railway Company, 2009 CIRB 461 and affirmed on judicial review by the Federal Court of Appeal in *Teamsters Canada Rail Conference v. Canadian National Railway Company*, 2009 FCA 368). Furthermore, the Board will not entertain applications that seek to obtain from the Board that which the applicant cannot achieve at the bargaining table (see *Rogers Cableystems Limited*, 2000 CIRB 51).

[39] In this case, the PSAC is essentially asking the Board to reconsider the decision it made in February 1999 that established a comprehensive bargaining unit for the SJIAA employees. The union relies on *Aéroport de Québec Inc.*, 2010 CIRB 557 (RD 557), in which the Board was persuaded to fragment a bargaining unit of airport employees in order to create a separate bargaining unit for the firefighters at the Québec City airport.

[40] The factors that caused the Board to determine that the comprehensive unit of employees at the Québec City airport was no longer appropriate for bargaining included clear evidence that the original structure had contributed to difficult negotiations and a lengthy work stoppage:

[12] The witness described the tensions that existed during the strike in 2004. The firefighters and some other blue-collar workers who, at the time, were covered by an agreement entered into by the parties in 2003 on the maintenance of certain activities during a strike or lockout, were in favour of a strike. The strike lasted a long time, according to the witness. It went on for 115 days. Employees who wanted to return to work and resolve the conflict, including the white-collar workers, were required to strike, whereas those who were covered by the agreement to maintain certain activities, including the firefighters, did not want to return to work, but were paid all the same.

[41] There was also evidence of very divergent interests within the Québec City airport bargaining unit. The fact that the firefighters had voted in favour of a strike, even though they would all have to work as a consequence of the maintenance of activities agreement, caused the employees who wanted to settle the dispute to believe that the strike was solely for the benefit of the firefighters. Furthermore, there was evidence that the significant differences in the terms and conditions of employment for firefighters created tension, resentment and frustration during negotiations. Consequently, the other members of the bargaining unit were also in favour of excluding the firefighters from the general unit.

[42] As is the case in St. John's, the firefighters in Québec City were dissatisfied with a job evaluation that the employer and union had developed, which they felt did not take into consideration important aspects of their job. Evidence was led that major problems were

expected in future rounds of bargaining due to the fact that firefighters were already at the top of the salary scale and there was therefore little room for wage improvements. In addition, firefighters and other trade groups had little or no work force mobility and the firefighters were looked upon as a separate group with distinct terms and conditions of employment.

[43] While recognizing that the partition of a bargaining unit is an exception, the Board was persuaded on the basis of the evidence it heard that the interests of the firefighters at the Québec City airport were so divergent from those of the other employees in the unit as to justify the creation of a separate bargaining unit.

[44] The issue for the Board in this case is whether there is compelling evidence that the comprehensive bargaining unit at the St. John's airport is no longer appropriate for collective bargaining. In other words, the Board must assess whether the current bargaining unit structure at the St. John's airport has resulted, or will result, in the impairment of effective labour relations. In making this assessment, the Board must give primary consideration to the *Code's* overriding objectives of encouraging free collective bargaining and fostering industrial stability (see *AirBC Limited* (1990), 81 di 1; 13 CLRBR (2d) 276; and 90 CLLC 16,035 (CLRBR no. 797)).

[45] Generally, encouraging free collective bargaining consists of ensuring that employees are able to exercise sufficient countervailing power to that of the employer to enable them to effectively bargain the terms and conditions of their employment. For the most part, such countervailing power is achieved through larger bargaining units. A review of the bargaining unit structures at other Canadian airports reveals that the Board has not adopted a "one size fits all" approach to bargaining unit determination at airports. The size of the airport, and thus the size of the bargaining unit(s), has clearly been a consideration for the Board. Of the 26 airports that form the National Airports System (NAS), firefighters are in a separate bargaining unit in only six locations. Of these, five of the separate firefighter units exist at larger airports (Edmonton, Montreal-Trudeau, Ottawa, Toronto-Pearson and Winnipeg), although there are large airports where the firefighters are part of a comprehensive unit (Calgary, Halifax and Vancouver). Of the 18 smaller NAS airports, only Québec City has a separate bargaining unit for firefighters. Consequently, for smaller airports, one can conclude that comprehensive units are the norm.

[46] With respect to the SJIAA, there are 16 firefighters in a bargaining unit of 50 full-time members. Admittedly, the bargaining unit is augmented by 20 to 30 seasonal employees hired for the winter, but it is the regular employees who form the core of the bargaining unit, who establish the priorities for collective bargaining and who ensure that the union is administered on a year-round basis. While placing the firefighters in a separate bargaining unit would give them greater control over the pursuit of their own interests, it would weaken the bargaining unit for the other employees by reducing it to approximately 34 members. The effect of the proposed fragmentation of the current bargaining unit on the other employees at the airport is an important consideration. The evidence before the Board is that firefighters have always played an important leadership role in the St. John's airport local. This involvement would be lost if the firefighters were to be placed in a separate bargaining unit. Accordingly, countervailing power considerations suggest that a comprehensive bargaining unit at the St. John's airport remains appropriate.

[47] To foster industrial stability, the Board considers not only the viability of the individual bargaining unit(s), but also the viability of the overall framework for collective bargaining. This involves considerations of administrative efficiency for both parties; reduction of the potential for multiple bargaining tables and thus sequential labour disputes; and whether the structure contributes to the parties' ability to develop a common framework of employment conditions and enhances employees' job security. Clearly, it is more administratively efficient for both the employer and the union to maintain a single bargaining unit. A single unit also reduces the effort that must be directed at bargaining and the potential for multiple disputes.

[48] In this case, the union suggests that the fact that there have been two lengthy strikes in the 14 years since the present bargaining unit was certified is evidence that this unit is not appropriate for collective bargaining. However, in reviewing the causes of these disputes, the Board is unable to find, on the evidence before it, that they were the result of any divergence between the interests of the firefighters and those of the other employees in the unit. In the 2003 work stoppage that led to the second collective agreement, the main issues were the wage increases sought by the employees and the employer's demand that new hires share the cost of benefits premiums. Neither of these issues were exclusive to the firefighters and, as CB testified,

there were no firefighter issues that impeded the negotiations. There were also no specific firefighter issues during the bargaining that led to the third collective agreement.

[49] In the 2012-13 round of bargaining, the key issues were the union's demand for wage parity with the Halifax airport and an employer demand to change certain job security and other provisions of the agreement. Again, there was no issue specific or unique to the firefighters. All of the employees voted to engage in strike action, and maintained cohesion for the duration of the work stoppage. The circumstances in this case are therefore quite different from those that existed at the Québec City airport during the 2004 work stoppage at that location.

[50] CB testified as to his perception that the other employees at the airport do not respect the firefighters and cited certain negative comments that have been voiced about firefighters. However, the evidence heard by the Board suggests that a different interpretation of those comments is possible. While the other employees may not appreciate the nature of the firefighters' working conditions, there appears to be no lack of applicants when vacancies arise in the Fire Hall. On the contrary, the Board was informed that heavy equipment operators take training on their own time in order to qualify for firefighter positions when they become available. In the Board's view, the negative comments to which CB referred were more likely voiced out of envy than disrespect. This evidence also suggests that the existence of a comprehensive unit provides a career path for employees in the bargaining unit.

[51] CB also testified that the firefighters are unable to obtain support from their colleagues for issues specific to firefighters during collective bargaining. However, the evidence before the Board was that issues raised by the firefighters directly with management, such as their shift schedule, have been addressed outside of collective bargaining. Although the firefighters are unhappy with the results of the Joint Job Evaluation Plan, a process is in place for them to grieve those results and the firefighters have taken advantage of that process.

[52] CB's testimony was that firefighters want to be able to address their issues at the bargaining table and have a mechanism to resolve differences without going to war with the employer. The evidence regarding the four rounds of collective bargaining that have occurred to date and the fact that management has addressed firefighter issues outside of collective bargaining does not support the firefighters' submissions regarding the effectiveness of collective bargaining.

CB also indicated that the fact that firefighters are subject to the maintenance of activities agreement required by section 87.4 of the *Code* is a point of contention within the unit. The parties are well aware that this provision of the *Code* would continue to apply even if the firefighters were in a separate unit. However, since all of the firefighters are obligated to work during a legal strike, the exercise of the right to strike or lockout would be ineffective for that unit and either party would be able to apply to the Board for a binding method of dispute resolution. It is evident that the firefighters' expectation is that, by having a bargaining unit of their own, they would be able to achieve through binding arbitration that which they have not been able to achieve through collective bargaining. As noted above, the Board will not entertain applications that have, as their purpose, improvements in the bargaining strength of one or the other of the parties (see *Rogers Cablesystems Limited, supra*). As well, in *El Al Israel Airlines*, 2009 CIRB 437, the Board made it clear that the fact employees are subject to section 87.4 of the *Code* is not a relevant consideration in determining the appropriateness of a unit for collective bargaining.

[53] Taking all of these factors into account, the Board is not persuaded that the current bargaining unit structure at the St. John's airport is no longer appropriate for collective bargaining. Accordingly, the application for a review pursuant to section 18.1 of the *Code* is dismissed.

[54] This is a unanimous decision of the Board.

Elizabeth MacPherson
Chairperson

Richard Brabander
Member

Norman Rivard
Member